

App. No. 09/893,293

Election under 37 CFR §1.142
Preliminary amendment under 37 CFR §1.115**REMARKS**

Claims 29-38 remain pending and under consideration. Claim 29 is an independent claim. Claims 29, 32, 34, and 36 have been amended. Claims 1-28 and 39-132 drawn to non-elected inventions have been cancelled. Examination and consideration of the application, as amended, are hereby respectfully requested.

Restriction/Election

Examiner has divided the claims of the instant application into the following distinct inventions:

1. Claims 1-3, drawn to methods for evaluating data with uncorrected subsets;
2. Claims 4-8, drawn to methods for evaluating data with corrected subsets;
3. Claims 9-14, drawn to methods using over-sampling rating;
4. Claims 15-22, drawn to apparatus for evaluating data;
5. Claims 23-28, drawn to apparatus for measuring an over-sampled rating;
6. Claims 29-38, drawn to methods for inventory management;
7. Claims 39-51, drawn to methods for inventory management with multiple access to database;
8. Claims 52-59, drawn to methods for data delivery to a distributor;
9. Claims 60-69, drawn to systems for data management for inventory;
10. Claims 70-82, drawn to systems with multiple database access;
11. Claims 83-90, drawn to systems for distributing data to a distributor;
12. Claims 91-100, drawn to methods for setting a sale price;
13. Claims 101-110, drawn to systems for comparing data;
14. Claims 111-121, drawn to methods for creating a database product; and
15. Claims 122-132, drawn to systems for creating a database product.

Applicant hereby elects Invention 6 (methods for inventory management) for further prosecution, without traverse. The elected claims are Claims 29-38.

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Claim Amendments

In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), certain language in one of the patents at issue, similar to language originally employed in some of the claims of the instant application, has been construed in a manner differing from that intended by the Applicants. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, the claims in question have been amended so as to ensure that the claims will be construed in the manner originally intended by the Applicants.

The recently-decided case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the Applicants, Claims 29, 32, 34, and 36 have been amended. In each instance, the phrase "at least one of" has been deleted, and the conjunction "and" in the subsequent pair or list of items has been replaced by the conjunction "or". The conjunction "or" is to be construed inclusively (e.g., "a dog or a cat" would be interpreted as "a dog, or a cat, or both"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed. 2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either...or", "only one of...", or similar language; or ii) two or more of the listed alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicants believe that this amendment does not change the scope of the amended claims from the originally intended scope. In particular, the amendments set forth herein are not narrowing amendments, nor are they made for reasons related to patentability.

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Conclusion

In view of the above, it is submitted that Claims 29-38 are ready for examination.
Consideration and allowance of Claims 29-38 at an early date are earnestly solicited.

Respectfully submitted,



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